(3) (C) (C)

(1) 15/12 Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P.NO. 1189 /2005

Petitioner : Ramakant Sahu, S/o Shri Baliram Sahu, aged about 33 years, Occupation: Sub-Inspector, resident of Kanker, Dist. Kanker (C.G.)

Vs.

Respondents : 1) State of Chhattisgarh, through Secretary, Department of Home (Police), D.K.S.Bhawan, Mantralaya, Raipur.

2) Superintendent of Police, Kanker, District Kanker (C.G.)

P.R. No. 66/1/05 Presented by Mr. Sushil Yadav dated 18/2/05

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WRIT PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA

(39)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1189 of 2005

Ramakant Sahu

- Versus -

State of Chhattisgarh and another

POST FOR ORDER ON 15th JUNE, 2005

Sd/-
L.C. Bhadoo
Judge

(40)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.1189 of 2005

Ramakant Sahu

- Versus -

State of Chhattisgarh and another

Present: -

Dr. N.K. Shukla, Senior Advocate with Mr. Shailendra Shukla, Advocate: — For the petitioner.

Mr. U.N.S. Deo, Govt. Advocate with Mr. Sudhir Agrawal, Panel Lawyer: — For the State/respondents.

O R D E R

(Passed on 15th June, 2005)

L.C. BHADOO, J.

1. The petitioner, who is working as Sub-Inspector of Police in District: Kanker, has preferred this writ petition under Articles 226 & 227 of the Constitution of India, being aggrieved by the action of respondent No.2 Superintendent of Police, Kanker, whereby respondent No.2 is not relieving the petitioner in compliance of order dated 5-8-2004 (Annexure P-1) transferring the petitioner from District: Kanker to G.R.P., Raipur.

2. Brief facts leading to filing of this writ petition are that the petitioner is working as Sub-Inspector at Kanker since July, 2002, in compliance of the transfer order dated 16-7-2002 (Annexure P-3). The petitioner has been transferred from District: Kanker to G.R.P., Raipur vide order dated 5-8-2004 (Annexure P-1). However, in spite of several representations made by the petitioner, respondent No.2 is not relieving him in compliance of the order Annexure P-1. Therefore, by this writ petition the petitioner has sought a relief that respondent

No.2 be directed to relieve the petitioner so as to enable him to join at his new place of posting i.e. G.R.P., Raipur.

3. Reply has been filed on behalf of the State/respondents in which it has been mentioned that the entire Bastar Division consists of three districts namely, North Bastar Kanker, Bastar & South Bastar Dantewada, and these areas are severely Naxalite affected areas and the Naxalite problem is all pervading and alarming, therefore, the presence of Police personnel who are trained in Anti-Naxalite Operations are very much necessary in order to control the Naxalite menace. The petitioner is the only person who is Anti-Naxalite Greyhound Trained, therefore, his presence is necessary in Kanker District. It has been specifically mentioned in Annexure P-1 that the transferred persons should be relieved only when a suitable reliever comes in and takes the charge from the transferred person. So far no person has joined who is Anti-Naxalite Greyhound Trained, therefore, the usual procedure regarding transfer of civil Government employees would not be applicable in the case of Police personnel, specially in view of the fact that the area of Bastar Division is highly Naxalite affected. Therefore, the writ petition be dismissed.

4. I have heard learned counsel for the parties.

5. Dr. N.K. Shukla, learned Senior Advocate for the petitioner argued that even though two persons namely, S.S. Maharathi & Rahul Tiwari have already joined, the petitioner has not been relieved. He further argued that as per the Government policy dated 13-2-2001 (Annexure P-5) the Sub-Inspectors who have worked for two years in the Naxalite affected area to the satisfaction of the authority, are entitled for transfer in any one range out of the three police ranges. Therefore, looking to this policy also the petitioner ought to have been relieved.

6. In the reply it has been mentioned that it is true that Rahul Tiwari & S.S. Maharathi have joined in Kanker District, but they are not mezzo trained.

7. Having heard learned counsel for the parties, I have perused the relevant record. Perusal of the transfer order Annexure P-1 shows that in all 18 Sub-Inspectors were transferred by this order, and below the name of transferred employees (Sub-Inspectors) a note has been appended that the employees who have been transferred from scheduled area/Naxalite affected area should be relieved only after their reliever joins the duty.

8. It is true that the Police personnel are required to maintain law and order, and particularly when they are posted in the Naxalite affected areas in order to control and curb Naxalite activities, trained Police personnel are always required. This fact cannot be denied. But at the same time, the Government has itself issued the guidelines dated 13-2-2001 (Annexure P-5) in which it has been mentioned that if any Sub-Inspector or Inspector has served two years in the Naxalite affected area to the satisfaction of the authority, then he is entitled for transfer in any range out of the three Police ranges. This clause of the policy shows that in order to keep the morale of the Police personnel high and to keep them changing so as to enable them to work efficiently in the Naxalite affected area, two years' period has been considered sufficient by the Government for their posting at a time in Naxalite area. Considering this aspect, this condition has been incorporated in the policy guidelines.

9. It is common knowledge that if an employee is forced to continue in the Naxalite affected area for indefinite period then that is bound to affect the morale and efficiency of the concerned employee, and that is why the Government considering all the pros and cons incorporated a clause in the transfer policy that if any Sub-Inspector or Inspector

has served satisfactorily for about two years in the Naxalite affected area, then he is entitled for his transfer in any one of the ranges out of the three ranges.

10. Therefore, the authorities are required to take into consideration this aspect also, otherwise, if any Police personnel is continuously kept in the Naxalite affected area then he may lose his interest in his duty and he may also adopt the indifferent attitude.

11. It appears that taking into consideration this aspect of the matter, on completion of two years' service, the petitioner was transferred out of the Naxalite area vide Annexure P-1. As far as the question of joining of the reliever is concerned, this condition cannot be made applicable for indefinite period. It can be made applicable for a reasonable period so that in case, the reliever has not joined his duties then the Superintendent of Police can ask the headquarters to direct the reliever to join immediately or ask the headquarters to post any other person to relieve the transferred employee. When the State Government while transferring the petitioner has posted some one then it is the duty of the Government to enforce that order and if the substitute has not joined then they should find out some other substitute so that the transferred employee is relieved. In this connection, if we look into the order Annexure P-1, it was issued on 5-8-2004 and by now more than ten months period has been completed after issuance of this order, but, even then the petitioner is not being relieved. Moreover, the petitioner has been transferred at a distance of round about 150 kms. In case his services are required, then he can be summoned from Raipur at any time, but in the presence of Annexure P-1, the transfer order, and also looking to the transfer policy, the petitioner cannot be detained for indefinite period. When the Government has issued his transfer order then it is for the Government/concerned authorities to make proper arrangement within

a reasonable time, so as to enable the petitioner to join his duties at transferred place. Therefore, the action of respondent No.2 in any circumstances cannot be held to be justified, and the same is arbitrary.

12. In the result, the petition is allowed and respondent No.2 is directed to relieve the petitioner from his present place of posting so as to enable him to join at the new place of posting. However, one month more time from today is allowed to the respondents to relieve the petitioner and in the mean time, they can make arrangement for reliever of the petitioner.

Sd/-
L.C. Bhadoo
Judge

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